



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1075]

Certain Electrochemical Glucose Monitoring Systems and Components Thereof

Commission Determination to Affirm an Initial Determination Granting a Motion for Summary Determination of Non-Infringement of the Asserted Patents; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm an initial determination (Order No. 33) granting a motion for summary determination of non-infringement of the asserted patents and the presiding administrative law judge's ("ALJ") underlying orders. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202-708-2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<https://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 25, 2017, based on a complaint filed on September 18, 2017, on behalf of Dexcom, Inc.

of San Diego, California (“Dexcom”). 82 Fed. Reg. 49420 (Oct. 25, 2017). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electrochemical glucose monitoring systems and components thereof by reason of infringement of one or more of claims of U.S. Patent Nos. 9,724,045 and 9,750,460. The notice of investigation named as a respondent AgaMatrix, Inc. of Salem, New Hampshire (“AgaMatrix”). The Office of Unfair Import Investigations was not named as a party in the investigation.

On May 10, 2018, the ALJ issued Order No. 26, granting-in-part a motion by AgaMatrix to strike portions of Dexcom’s expert reports. Order No. 26 struck, in relevant part, certain portions of an expert report relating to whether the accused products meet the “film” term of the “enzyme-containing film” limitation of the asserted claims and precluded Dexcom from relying on the arguments and theories described in the struck portions of the expert report during the investigation.

On May 17, 2018, AgaMatrix filed a motion for summary determination of non-infringement of the asserted patents on the basis that Dexcom cannot prove that the accused products directly or indirectly infringe any of the asserted claims. On May 29, 2018, Dexcom opposed the motion. On June 1, 2018, AgaMatrix moved for leave to file a reply in support of its motion. On June 6, 2018, Dexcom opposed the motion for leave.

On June 7, 2018, the ALJ issued the subject initial determination (“ID”) (Order No. 33), granting AgaMatrix’s motion for summary determination of non-infringement with respect to direct infringement but denying the motion with respect to indirect infringement. The ID also denied AgaMatrix’s motion for leave to file a reply in support of its motion and stayed the

procedural schedule pending review of the ID.

On June 18, 2018, Dexcom filed a petition for review of the ID's findings on direct infringement and Order No. 26. On June 25, 2018, AgaMatrix filed its opposition.

On July 23, 2018, the Commission determined to review the subject ID in its entirety, as well as the underlying orders. Notice (July 23, 2018).

Having reviewed the record in this investigation, including the subject ID, the petition for review, and response thereto, the Commission has determined to affirm Order No. 33's summary determination of non-infringement and the ALJ's underlying orders. Commissioner Schmidlein dissents from the majority's decision. Her views have been filed on EDIS.

The investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Issued: April 4, 2019.

Lisa R. Barton,

Secretary to the Commission.

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